

REMARKS

Applicants kindly thank the examiner for his time to discuss this case by telephone. Reconsideration and withdrawal of the examiner's prior rejections under 35 USC §§102 and 103 is requested in view of the foregoing amendments, remarks and the declaration under 37 CFR § 1.132 submitted herewith.

35 USC §102

The examiner previously rejected claims 29, 30, 32, 33, 36-41, 44-45, 51, 54, and 61 under 35 U.S.C. 102(b) as being anticipated by Chaussee, US 5,334,325, asserting that Chaussee teaches post-foaming gels dispensed from a piston can (see abstract), that an example of such a composition comprises 22.5% phosphate ester anionic surfactant, 1.47% oleyl betaine, 0.5% ethoxylated alcohol, propylene glycol, cyclomethicone, 50% water, and a pentane/isobutane foaming agent (col. 9, example 7) that with respect to specific properties such as viscosity and lamellar structure, as the composition of the reference contains the precise components in the precise concentrations of the present claims, the examiner maintains the composition will inherently exhibit these properties, and that as this reference meets all material limitations of the claims at hand, the reference is anticipatory.

The examiner previously has rejected Claims 29, 30, 32, 33, 36, 38-40, 44-50, 54, and 61 under 35 U.S.C. 102(b) as being anticipated by George et al, US 5,500,211, asserting that George et al teach self-foaming shaving gels (see abstract), that an example of such a composition comprises 7.5% myristoyl sarcosinate, 1% ethoxylated alcohol, myristyl alcohol, 4.5% mineral oil, hydroxyethyl cellulose, hydroxypropyl cellulose, polyquaternium-10, 74.5% water, and an isopentane/isobutane foaming agent wherein the composition is dispensed in a piston can (referred to in the example as a barrier-type aerosol container) (Col.5, example 4), that with respect to specific properties such as viscosity and lamellar structure, as the composition of reference contains the precise components in the precise concentrations of the present claims, the examiner maintains the composition will inherently exhibit these properties, and as this reference meets all material limitations of the claims at hand, the reference is anticipatory. In response, independent claims 29 has been amended to delete fatty alcohols such as ethoxylated alcohol and myristyl alcohol as a lamellar structurant in order to distinguish the instant claims from Chaussee and George.

35 USC §103

The examiner has rejected claims 29, 30, 32, 33, 36, 38, 44, 45, 47-51, 54, and 61 under 35 U.S.C. 103(a) as being unpatentable over Marchesi et al, US 6,682,726, asserting that Marchesi et al teach self-foaming shaving lotions (see abstract), that an example of such a composition comprises 10.78% sarcosinate anionic surfactant, 0.53% carrageenan gum, glycerin, 78.57% water, and an isopentane/isobutane foaming agent wherein the composition is dispensed in a piston can (referred to in the example as bottom-gassed cans) (col. 5, example 8), suitable additives include ethoxylated alcohols, fatty acid ethers and fatty alcohols. Applicants respectfully traverse this rejection. Marchesi, et al., was filed on April 30, 2001, and published on February 6, 2003 as US 2003/0026775. The instant case was filed on August 4, 2001, which was well before Marchesi's publication date. Therefore, it is respectfully asserted that a proper *prima facie* case under 35 USC 103(a) has not been made out for Marchesi, et al., as Marchesi, et al. is not a valid 35 USC 103(a) reference because of its later publication date.

The examiner has rejected claims 29, 30, 32, 33, 36, 42 and 44-61 under 35 U.S.C. 103(a) as being unpatentable over Sporri, US 5,127,566 in view of Dixon, US 6,407,044, asserting that Sporri teaches piston can formulations (see abstract), that Sporri teaches that piston cans are particularly well suited and in wide use for post-foaming shaving gel products (col. 1, lines 10-38), and that Sporri does not teach the specific post-foaming compositions of the present claims. The examiner further asserts that Dixon teaches aerosol personal cleansing compositions (see abstract), that an example of such a composition is a shower gel base comprising 4.73% sodium lauryl ether sulfate, 3% glycerin, 5.25% lauroamphoacetate, 2.43% palm kernel fatty acid, 0.4% cationic/polymer, and the balance water wherein the base is dispensed in a pressurized mixer containing 85-97% base and 3-15% propellant (col. 15, example 1), that another example comprises 5.13% sodium lauryl ether sulfate, 0.5% petrolatum, 7.5% soybean oil, and the balance water wherein the base is dispensed in a pressurized mixer containing 85-97% base and 3-15% propellant (col. 15, example F), that the viscosity of these compositions may be as high as 100,000 cps (col. 11, lines 30-44), and that with respect to the present compositions being present in a lamellar phase, as fatty acids are well known in the art as lamellar structurants, the examiner maintains these examples will inherently exhibit this property.

The examiner asserts that it would have been obvious to one of ordinary skill in the art to package the composition of Dixon in a piston can and so meet the limitations of the claims at hand as Sporri teaches that piston cans are particularly well suited and in wide use for post-foaming shaving gel products. Applicants respectfully traverse this rejection.

Dixon relates to aerosol personal cleansing emulsion compositions which contain low vapor pressure propellants and that are packaged into an appropriate aerosol container including aerosol metal containers and bag-in-bottle or bag-in-can containers (see col. 16, lines 10-13). As the examiner admits, there is no disclosure or suggestion in Dixon of a composition that can be packaged in an aerosol container that contains an imperfect barrier seal such as an aerosol piston can. Such piston cans require unique rheological properties so that the composition does not flow by the piston and become contaminated with the aerosol propellant contained in the container. None of Dixon's examples disclose a liquid cleansing and moisturizing composition and dispensing system comprising a neat cleansing lotion and a volatile foaming agent formulated therein having an initial viscosity greater than 40,000 cps measured at 10Pa at 25° C, which is contained in a piston can as presently claimed. Dixon's examples disclose compositions having a rheology suited for an aerosol container that has no barrier or a bag-in-bottle or bag-in-can that has a perfect barrier. Dixon therefore does not disclose a lamellar structured self-foaming composition with rheological properties suitable for aerosol piston cans. With respect to the examiners assertion that Dixon inherently discloses compositions having the claimed rheological properties, experiments were undertaken to measure the viscosity of representative examples of Dixon that are described in the Declaration submitted herewith. It was found that representative examples of Dixon gave viscosities far lower than is claimed in the instant case. Consequently, applicants respectfully assert that Dixon does not disclose compositions that inherently have a viscosity in excess of 40,000 cps. As clearly supported in the Declaration.

Sporri discloses an aerosol can piston and system suitable for post-foaming shaving gel products (see col. 1, line 15). Although Sporri suggests that self-foaming shaving gel products may be packaged in an aerosol piston can, Sporri does not remedy the deficiencies of Dixon with respect to disclosing or suggesting a specific lamellar composition having an initial viscosity greater than 40,000 CPS measured at 10Pa at 25° C, or in other words with respect to disclosing or suggesting that a lamellar composition with specific properties can be successfully packaged in an aerosol piston can.

Summary

In summary, by the present amendment, claim 29 is amended to delete fatty alcohols as lamellar structurants. Applicants submit that no new matter has been added by these amendments.

CONCLUSION

In light of the above amendment, remarks, and declaration submitted herewith, applicants submit that the claims now pending in the present application are in condition for allowance. Allowance of the application is respectfully requested.

If a telephone interview would facilitate prosecution of the application, the Examiner is invited to contact the undersigned at the number provided.

Respectfully submitted,



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